IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.4788 OF 2006

M/s.Petrosolv India Co. &
anr. .. .. Petitioners

v/s.

Union of India & ors. .. Respondents

Mr.D.A. Shroff with Mr.Kantawala holding for Mr.Ravi Hirani for petitioners.

Mr.A.J.Rana with Mr.P.S.Jetly and Mrs.A.S.Pai for respondents.

CORAM : H.L. GOKHALE &
V.R. KINGAONKAR, JJ.

DATED : 10th August 2006

ORAL ORDER : (Per H.L.Gokhale, J.)

1. Heard the learned Counsel for the parties.

2. The 2nd petitioner herein is a partner of the 1st petitioner-Company. The petitioners have filed the present Petition to challenge the order dated 13th July 2006 passed by the Settlement Commission rejecting their Application dated 20th July 2006 filed under Section 127B of the Customs Act, 1962 read with Section 32E of the Central Excise Act, 1944.

3. The allegation against the petitioners is that they have effected fraudulent export. The

goods concerned were seized on 30th November 2005 and thereafter this Application was filed before the Settlement Commission on 28.4.2006. The Settlement Commission has rejected the Application mainly on the ground that it is premature which can be clearly seen from paragraph 4.6 of the impugned order. The Commission has observed in paragraph 6 thereof that the Applicants are free to make fresh applications, if they so desire on receiving a Show Cause Notice issued by the Revenue indicating the amount of additional duty levied under the Customs Act, 1962 as well as the Central Excise Act, 1944.

4. The submission of the petitioners amongst others is that the petitioners did not get a personal hearing before the Settlement Commission. Now, what is material to note is that petitioner No.1 has been detained under the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 (COFEPOSA) by an order dated 5th May 2006 and that order has since been confirmed by the Division Bench of this Court by its order dated 27th July 2006.

5. Mr.Shroff, learned Counsel appearing for the petitioners, firstly, submitted that it was

not necessary for the petitioners to wait for 180 days to file their Application under Section 127B (1) of the Customs Act. Now, sub-section (2) of Section 127B is very clear and it lays down that where any dutiable goods amongst others have been seized under Section 110, the Applicants shall not be entitled to make an Application under sub-section (1) before the expiry of 180 days from the date of the seizure. In our view, the wording of the section is very clear and unambiguous. We may also refer to an unreported judgement of a Division Bench of this Court rendered in **Writ Petition No.115 of 2004 along with other Writ Petitions decided on 21st July 2005 (Union of India vs. Hoganas India Ltd. & ors.)** wherein the Court has clearly held that the requirements of Section 127B are mandatory and unless they are all fulfilled, there is no occasion to entertain the Applications for settlement.

6. Mr.Shroff, learned Counsel appearing for the petitioners, submitted that it was necessary for the Commission to call for a report from the Commissioner of Customs under Section 127C (1) of the Customs Act and also to give an opportunity of being heard under the proviso to Section 127C. There can be no dispute with this proposition.

However, one cannot fault a preliminary scrutiny by the Commission as to whether the Application satisfies the condition under Section 127B(2). This will be before one refers to Section 127C of the Customs Act. In the present case, all that the Commission has done is to state that this mandatory period of six months had not elapsed and, therefore, the Application was premature. Mr.Shroff then submitted that a Demand Notice had been issued on 20th March 2006 and that should be construed as amongst others a cause for the petitioners to move an Application. If that date is considered, undoubtedly the Application will be premature. Even if we consider the date of seizure of the goods, the application is premature. As far as the submission of Mr.Shroff that the petitioners are not required to wait for this period of 180 days is concerned, we reject it inasmuch as the cause for any party to approach the Settlement Commission would arise only after the expiry of 180 days contemplated under sub-section (2) of Section 127B in the event of any seizure or in the event of any notice or otherwise. The Commission has clearly stated that the petitioners may file another Application when a cause arises.

7. Mr.Shroff submitted that the order of Settlement Commission was an ex parte order and that the Supreme Court had directed in petitioner's own case on 19.7.2006 that the detenu be heard. Mr.Rana, on the other hand, pointed out that the Central Government was not served in the Supreme Court and the Commission has passed its order on 18.7.2006 i.e. prior to the Supreme Court order. That apart he pointed out that the impugned order does not cause any prejudice to the applicant. His application is rejected only as premature and is given the liberty to file a fresh one.

8. Mr.Shroff referred us to a judgment of the Apex Court in the case of **M/s.R.B.Shreeram Durga Prasad and Fatehchand Nursing Das vs. Settlement Commission (IT & WT) & nr. reported in AIR 1989 SC 1038** which is on Section 245D of the Income Tax Act, which also lays down that the Settlement Commission shall call for a report from the Commissioner and give a hearing. The judgment undoubtedly states in paragraph 4 and thereafter in paragraph 6 that the provisions have to be followed and natural justice is clearly written in the particular section. Again as is stated earlier, there is no difficulty in observing that

this proposition will certainly apply when one refers to Section 125C of the Customs Act. In the instant case, we are concerned with an earlier stage, namely, which requires the Application to be filed only after a period of six months expires. This period is provided for the department to complete its investigation and arrive at a finding whether there is complicity of the applicant or the extent of evasion of duty. We have heard Mr.Shroff on the aspect of limitation and we are not satisfied that this period of six months had expired.

9. Mr.Shroff has referred us to the judgment of the Settlement Commission in the case of **Chawla Enterprises Ltd. reported in 2002 (139) E.L.T. 464 (Sett. Comm.)**. It only lays down that in a case under Section 127B(2) an applicant can approach the Commission after 180 days from seizure and he may not wait for a show cause notice. In the facts of the present case, the application is filed even before expiry of 180 days from the date of seizure. The approach adopted by the Division Bench of our Court in the judgment rendered in **Writ Petition No.115 of 2005 (supra)** binds us and as stated earlier, the provision of sub-section (2) of Section 127B is unambiguous and, therefore, we cannot accept the

view taken by the Settlement Commission.

10. In the circumstances aforesaid, the Petition is rejected.

(H.L. GOKHALE, J.)

(V.R. KINGAONKAR, J.)